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STATE OF MONTANA
By: Stephanie Cable
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Menahan, Mike
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MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY

DISABILITY RIGHTS MONTANA, and BIG SKY 55+, Plaintiff, v. STATE OF MONTANA and CHRISTI JACOBSEN, in her official capacity as Montana Secretary of State, Defendant.	Cause No.: ADV-2025-293 **ORDER – MOTION FOR SUMMARY JUDGMENT**

Before the Court is Plaintiffs Disability Rights Montana and Big Sky 55+ (collectively "Disability Rights") motion for summary judgment. Defendants State of Montana and Christi Jacobsen, in her official capacity as Montana Secretary of State (collectively "State") oppose the motion. Raph Graybill, Abba Khanna, Katie Chamblee-Ryan and Marcos Mocine-McQueen represent Disability Rights. Montana Attorney General Austin Knudsen, Alwyn

Lansing, Michael Russell, Michael Noonan and Thane Johnson represent the State. The parties appeared for oral argument on September 10, 2026.

STATEMENT OF FACTS

Absentee voting is the predominant form of voting in Montana. There are many and varied reasons electors choose to vote absentee rather than travel to a polling location. These include Montana's geography, its rural character, its weather, and its perennially bad roads. They may include an elector's personal circumstances, such as military service, work location, travel plans, age, disability, or illness. Whatever the reason, Montana facilitates and encourages its citizens to exercise their right to vote, and rightfully so.

Montana has multiple safeguards to ensure the identity of every person who casts an absentee ballot. First, a voter must request an absentee ballot by submitting an application, which includes the voter's full name, birth date, address, and signature. Before issuing an absentee ballot, an election administrator compares the signature on the application to the signature on the person's voter registration application. If the administrator is convinced the individual making the application is the same as the individual whose name appears on the registration form, the administrator sends that person an absentee ballot. If the application has no signature, or if the administrator is not convinced the two signatures match, the administrator must contact the voter so they may attempt to resolve the issue.

When an absentee ballot is issued, it includes a unique bar code, linked to each individual voter. When the voter returns the ballot, an election administrator scans the bar code, which pulls up the voter's information and signature. The election administrator then compares the signature on the

envelope to the signatures on the voter's registration and ballot applications. If the signature on the envelope matches a signature on file, the ballot is counted. If the signature is missing or the administrator determines it does not match a signature on file, the administrator must notify the voter, who has until 5:00 p.m. the day after the election to cure the issue by submitting a new signature and a copy of an acceptable form of identification to their county elections office. A portion of Montana voters whose ballots were rejected for a missing or mismatched signature are often unable to complete the cure process. In 2024, the statewide average of uncured and therefore uncounted ballots was one-half of one percent (0.5%).

At issue in this case is House Bill 719 (HB 719 or the "Act"), entitled An Act Revising Laws Related to an Elector's Date of Birth, enacted by the Montana Legislature during the 2025 Legislative Session, and signed into law by Governor Gianforte on May 5, 2025. The Act made three substantive changes to Montana's absentee voting laws. First, it requires an applicant for voter registration to provide their date of birth in addition to their signature when registering to vote. Second, it requires an elector who wishes to vote absentee to include their date of birth in addition to their signature on their application to vote absentee. If either their signature or date of birth does not match their voter registration form, the voter must be notified and cure the discrepancy before a ballot may be issued. Third, when an elector votes absentee, it requires the elector to provide their date of birth along with their signature on the signature envelope when returning their absentee ballot. The ballot may be counted only if both the signature and the date of birth match the voter's absentee ballot application and registration record. If either the signature or the date of birth is

missing or does not match, the voter is notified and has until 5:00 p.m. the day after the election to "cure" their ballot by submitting a form along with photo identification. Uncured ballots are not counted.

The first elections held following the enactment of HB 719, (requiring the elector to include their date of birth[1] on their absentee ballots), were the 2025 municipal elections. In those elections, one percent (1%) of statewide ballots were uncounted solely because of a missing or incorrect birth year. Prior to the enactment of HB 719, the percentage of uncounted absentee ballots statewide was one-half of one percent (0.5%) of the ballots cast.

The second election subject to HB 719's birth year requirement took place on May 5, 2026, with all-mail elections held in 30 counties. The number of ballots uncounted statewide solely due to a missing or incorrect birth date is unclear. However, the total rejection rate in Montana's six most populous counties ranged from more than twice the November 2024 rejection rate—in Lewis and Clark County, it rose from 0.29% to 0.80%, to Gallatin County, where it rose from 0.47% to 2.75%.

The third election subject to HB 719's birth year requirement was the federal and state primary election held on June 2, 2026. The percentage of ballots that were uncounted statewide solely because of a missing or incorrect birth year was 0.41%.

Persons with disabilities and the elderly tend to rely on absentee voting more than the general electorate and imposing additional requirements on

[1] Out of concern regarding elector's right of privacy, the Secretary of State unilaterally changed the requirement that the elector include their full date of birth on their absentee ballot, and instead only required an elector to include their birth year on the absentee ballot. The parties do not take issue with this change. The Court may use "date of birth" or "birth year" interchangeably to refer to the requirement that electors include their birth year on the absentee ballot.

absentee voting naturally affects those persons more than the electorate at large. Additionally, some persons with disabilities may have difficulty recognizing what information is being requested, such as a birth date, or may have difficulty writing their birth date on an absentee ballot.

PRINCIPLES OF LAW

Summary judgment is warranted when no genuine issues of material fact exist, and the moving party is entitled to judgment as a matter of law. Mont. R. Civ. P. 56(c)(3). Summary judgment is appropriate when "the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Mont. R. Civ. P. 56(c)(3). The party moving for summary judgment must establish the absence of any genuine issue of material fact and that the party is entitled to judgment as a matter of law. *Tin Cup County Water &/or Sewer Dist. V. Garden City Plumbing*, 2008 MT 434, ¶ 22, 347 Mont. 468, 200 P.3d 60.

Once the moving party has met its burden, the party opposing summary judgment must present affidavits or other testimony containing material facts which raise a genuine issue as to one or more elements of its case. *Id*., ¶ 54 (citing *Klock v. Town of Cascade*, 284 Mont. 167, 174, 943 P.2d 1262, 1266 (1997)). To avoid summary judgment, the opposing party's evidence "must be substantial, 'not mere denial, speculation, or conclusory statements.'" *Hadford v. Credit Bureau, Inc*., 1998 MT 179, ¶ 14, 962 P.2d 1198, 1201 (quoting *Klock* at 174).

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The constitutionality of a statute is a question of law. *State v. Knudson*, 2007 MT 324, ¶ 12, 340 Mont. 167, 174 P.3d 469. Statutes are presumed constitutional, and the party challenging a statute has the burden of proving it unconstitutional or showing that the statute infringes on a fundamental right. *Bd. of Regents of Higher Educ. of Mont. v. State*, 2022 MT 128, ¶ 10, 409 Mont. 96, 512 P.3d 748; *Weems v. State*, 2023 MT 82, ¶ 34, 412 Mont. 132, 529 P.3d, 798; *Mont. Auto. Ass'n v. Greely*, 193 Mont. 378, 382-83, 632 P.2d 300, 303 (1981). If the challenger shows an infringement on a fundamental right, a presumption of constitutionality is no longer available. *Greely*, 193 Mont. at 382-83, 632 P.2d at 303. The statute is reviewed under a higher level of scrutiny, and the burden necessarily shifts to the State to demonstrate that the statute is constitutional. *Weems*, ¶ 34.

ANALYSIS

The right to vote is a clear and unequivocal fundamental right under the Montana Constitution. "All elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage." Mont. Const. art. II, § 13; *Willems v. State*, 2014 MT 82, ¶ 32, 374 Mont. 343, 325 P.3d 1204. Certain powers regarding elections are delegated to the legislature. "The legislature shall provide by law the requirements for residence, registration, absentee voting, and administration of elections. It may provide for a system of poll booth registration, and shall insure the purity of elections and guard against abuses of the electoral process." Mont. Const. art. IV, § 3. The legislature's responsibility must be scrutinized against the

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right to vote, which is "the pillar of our participatory democracy," and "without which all other [] [rights] are meaningless." *Mont. Democratic Party v. Jacobsen*, 2022 MT 184, ¶ 19, 410 Mont. 114, 518 P.3d 58.

When a law impermissibly interferes with the right to vote, courts must apply strict scrutiny. *Montana Democratic Party v. Jacobsen,* 2024 MT 66, ¶ 34, 416 Mont. 44, 545 P.3d 1074. To determine whether a law impermissibly interferes with the right to vote, the court must examine the degree to which the law infringes upon it. Plaintiffs have the burden of demonstrating the law interferes with all electors' right to vote generally or interferes with certain subgroups' right to vote specifically. If Plaintiffs meet their burden of proving that a law impermissibly interferes with the right to vote, the State must show that a law is the least onerous path to a compelling state interest. *Id*.

When a law minimally burdens the right to vote, but does not impermissibly interfere with it, middle-tier analysis is appropriate. *Id*. at ¶ 38, (citing *W. Tradition P'ship v. AG*, 2011 MT 328, ¶ 34, 363 Mont. 220, 271 P.3d 1). Under middle-tier analysis, the State must show the statute is (1) reasonable, and (2) its asserted interest is more important than the burden on the right to vote.

The parties disagree as to what level of analysis is appropriate. However, before determining which level applies, the State argues there are genuine issues of disputed material fact which preclude summary judgment. A genuine issue of material fact exists when the fact is "materially inconsistent with proof of an essential element of a claim or defense at issue." *Speer v. Dep't of Corr*., 2020 MT 45, ¶ 17 n.4, 399 Mont. 67, 458 P.3d 1016. The Court must view the record in the light most favorable to the non-moving party and draw all reasonable inferences against summary judgment. *Id*. at ¶ 17.

The State argues there is a factual dispute as to the severity of the burden HB 719 places on the right to vote. While the parties might dispute the meaning of the term "severe," the percentage of ballots that went uncounted in each of the three elections conducted since the passage of HB 719 is not in dispute. Further, the State's argument regarding disputed facts addresses the question whether strict scrutiny applies in the analysis. Those arguments are not material as the Court agrees with the State that strict scrutiny does not apply. Nonetheless, there are not disputed issues of material fact to preclude summary judgment.

To determine whether a law impermissibly interferes with the right to vote and triggers strict scrutiny, the Court must examine the degree to which the law infringes upon the right. HB 719 requires an elector to submit their birth date to election officials when registering to vote, to provide their birth date when requesting an absentee ballot, and to include their birth date when they return their absentee ballot. The State argues that placing a birth date on an absentee ballot creates a minimal burden on the right to vote.

Disability Rights maintains the number of ballots rejected in the elections held in November 2025 and May 2026, due to an incorrect or absent birth date, demonstrates HB 719 impermissibly burdens the right to vote. In 2024, prior to the enactment of HB 719, the percentage of uncounted[2] ballots was 0.5%. *Plaintiff's Statement of Undisputed Facts*, ¶ 37. In the November 2025 election, the percentage of uncounted ballots attributable solely to the birth date requirement was 1.0%, which totaled 1,814 absentee ballots. *Declaration of Dr. Kenneth R. Mayer*, Plaintiff's Ex. 39, p. 8. Disability Rights has not provided

[2] Uncounted ballots are ballots rejected for some reason and not cured prior to 5:00 p.m. the day after the election.

data as to the statewide percentage of uncounted ballots attributable to the birth date requirement in the May 2026 election. The State has provided the percentage of ballots which were rejected[3] due to the birth date requirement in the May 2026 election and the June 2026 primary, which were 1.55% and 0.41%, and 2,855 ballots and 1,103 ballots, respectively. *Declaration of Sadie Dallasera*.

While the evidence submitted by the parties is difficult to reconcile precisely, the evidence demonstrates HB 719 has resulted in absentee ballots being uncounted due to an erroneous or omitted birth date. The percentage of ballots that were rejected for the three elections lies somewhere between 0.41% and 1.55%, and the number of ballots rejected and uncounted number between 1,103 and 2,855.

Montana Democratic Party v. Jacobsen, 2024 MT 66, 416 Mont. 44, 545 P.3d 1074 is instructive to determine whether HB 719 impermissibly interferes with the right to vote. There, plaintiff challenged a number of new legislative enactments affecting the right to vote. House Bill 506 prohibited absentee ballots from being issued to any elector who was not yet eighteen years of age, even though they would be eighteen years old by election day. House Bill 176 eliminated election day registration and pushed the registration deadline back to noon the day before the election. House Bill 530 instructed the Secretary of State to promulgate rules prohibiting anyone from accepting a "pecuniary benefit" to assist a voter by returning their ballot for them. Senate Bill 169 changed the voter identification (ID) requirements by listing certain acceptable "primary" photo IDs which would suffice, such as a Montana driver's

[3] It is unclear from the State's declaration whether the rejected ballots are the number of ballots rejected and uncured, or simply the number of ballots rejected with some number later cured.

license, U.S. passport, or a Montana concealed carry permit. Other forms of identification, such as postsecondary education photo IDs, were classified as "secondary" IDs which required an elector to show the secondary ID plus an additional document such as a utility bill, bank statement, or government document listing the person's current name and address.

The Supreme Court determined House Bill 506 and Senate Bill 169 did not impermissibly infringe the right to vote and were therefore subject to middle-tier analysis because they minimally burdened the right to vote. The Court concluded:

> . . . [House Bill 506] does not interfere with the right to vote. No person is prevented from voting by this law, nor did appellees identify any person who could not or did not vote. However, the law takes away from this subclass an option to vote that all other eligible voters have: absentee voting.
>
> Absentee voting has transformed elections in Montana. Once regarded as a mere privilege from the customary and usual manner of voting, absentee voting has now become the predominate form of voting by all electors in Montana—accounting for almost three quarters of all voters in the 2018 election. By taking this predominate form of voting away from a subclass of voters, [HB 506] minimally burdens their right to vote.
>
> Thus, middle-tier analysis applies . . .

Id. at ¶¶ 51-53.

With regards to Senate Bill 169, the Court concluded:

> . . . The District Court found that plaintiffs had not identified a single individual who was unable to vote due to the new ID requirements . . . The District Court found that students are generally less likely to have a form of primary identification. Further, they "often do not receive utility bills, have bank statements addressed to their school

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> addresses, have any reason to have a government issued check, or have a job for which they receive paychecks," which are the secondary documents required if they wish to vote using their student IDs. Although these findings show that the ID law imposes a minimal burden on their right to vote, we do not find it persuasive enough to determine that the right to vote has been impermissibly interfered . . . We conclude that the record demonstrates the legislation imposes a minimal burden on student voting.

Id. at ¶ 111.

Conversely, the Court held that House Bill 156 and House Bill 530 impermissibly infringed the right to vote and were therefore subject to strict scrutiny. With respect to House Bill 156, the Court found that 70,000 Montanans utilized election day registration and that many voters would be disenfranchised without the availability of election day registration. *Id*. at ¶ 70. Evidence demonstrated that election day registration typically increased voter turnout by 2-7% compared to not having it. *Id*. at ¶ 71. Further, record evidence showed that House Bill 176 disproportionately affected two groups of voters more than others: first-time voters and Native Americans. More than 60% of Montanans who utilized election day registration were under the age of 34. Many Native Americans also relied on election day registration because of numerous issues they face in voting, including lack of access to mail, transportation, and the long distances to county seats where they can register. The Court found that many of these barriers could not be overcome, or become too costly to overcome, and thus disenfranchised these voters. *Id*. at ¶ 73. The Court concluded "record evidence undeniably shows that the rollback of election day registration will disenfranchise many voters, interfering with their right to vote. The State must therefore overcome strict scrutiny." *Id.* at ¶ 74.

Regarding House Bill 530, the Court concluded:

> . . . the District Court found that Native Americans disproportionately rely on ballot collection to vote . . . and also the unique circumstances in Indian country that make it much more difficult to access polling places or post offices. Many electors reside in remote areas and have long distances to polling places or post offices. Many do not have mail service to their homes. All these factors, and more, combine to make it much more difficult on average for people living on reservations to either get to a polling place on or before election day, or to mail an absentee ballot prior to election day. . .
>
> As a result, Native Americans disproportionately rely on ballot-collection services. Appellees collected at least 2,500 ballots in the 2016 and 2018 elections—or roughly 5% of the registered voters living on reservations in Montana each year. . .
>
> HB 530 takes away the only option to vote for a significant number of Native Americans living on reservations. Thus, it impermissibly interferes with the right to vote, which requires us to review with strict scrutiny.

Id. at ¶¶ 97-99.

In the present matter, there is no evidence anyone was prevented from voting due to the enactment of HB 719. Nor is there any evidence that HB 719 interfered with the right to vote. It did impose a new requirement for voting, i.e., a birth date. In that regard, HB 719 is more akin to Senate Bill 169, which changed the form of ID required to vote. The number and percentage of electors adversely affected by HB 719, while numerous, was not substantial. While there is some evidence HB 719 disproportionately affects electors with disabilities or the elderly, there is no evidence HB 719 has prevented them from casting a vote. HB 719 unquestionably resulted in a number of absentee ballots being rejected for failure to comply with the birth date requirement. However, this is partially

attributable to electors unfamiliarity with the new birth date requirement. As the Plaintiffs' expert witness discussed:

> Of the ballots rejected because of the birth year requirement, virtually all – 92% in Cascade County, 97% in Gallatin County and 94% in Missoula County –were *missing* the birth year entirely, clearly indicating that voters did not understand the administrative step. In addition, the Yellowstone Administrator reported in that absentee rejection rates remained high in the May 2026 election, and that 95% of absentee ballot rejections occurred because voters did not write their birth year on the absentee ballot envelope.

Declaration of Dr. Kenneth R. Mayer, Plaintiff's Ex. 39, p. 9-10.

While Disability Rights argue that even one uncounted vote is unacceptable, there are always going to be instances in which ballots are rejected and/or errors on ballots are not cured. "The cure failure rate will never drop to zero –in 2024, Montana rejected over 2,200 mail ballots, almost all for signature related reasons, even after the signature requirements had been in place for decades." *Id*. p. 10.

As absentee voters become more familiar with the birth date requirement, the number and percentage of ballots rejected for a missing or improper birth date will likely decline. Although the evidence to date is unclear regarding the impact of HB 719, it does suggest the number of rejected ballots is declining. In sum, the Court concludes HB 719 has not impermissibly interfered with the right to vote.

While HB 719 does not impermissibly interfere with the right to vote, the record demonstrates the legislation imposes a minimal burden on voting and a middle-tier analysis is therefore appropriate. Under middle-tier analysis, the State bears the burden to show the statute is (1) reasonable and serves a

legitimate state interest, and (2) that its asserted interest is more important than the burden on the right to vote. *Montana Democratic Party v. Jacobsen*, 2024 MT 66, ¶ 46.

According to the State, HB 719 is reasonable because confirming an "objective piece of identifying information already on file and known to the person voting assists election administrators in verifying that the person returning the ballot is the registered voter, particularly when multiple voters share similar or identical names." *State's Response Brief*, p. 10. The State has identified two interests HB 719 advances: promoting public confidence in state elections and preventing election fraud.

With respect to promoting public confidence in elections, the State's only argument is a conclusory statement that "voters and the public are more likely to trust results when administrators have reliable means to verify that each absentee ballot comes from the eligible voter." *State's Response Brief*, p. 11. The State does not explain how or why the addition of a birth date promotes public confidence and does not offer any evidence in support of its position. In response, Disability Rights argues the birth year requirement damages public confidence in elections because it has resulted in thousands of ballots being discarded due to missing or incorrect birth years. As the U.S. Supreme Court has observed, the "discarding of lawful [votes] erodes public confidence that the election results reflect the people's will." *Bost v. Ill. State Bd. of Elec.*, 607 U.S. 71, 78 (2026).

With respect to election fraud, the State argues requiring a birth year "reduces the risk that a ballot is returned by someone other than the voter." The State asserts that "Montana has documented instances of individuals casting

ballots in more than one state and has obtained convictions for deceptive election practices." *State's Response Brief*, p. 11. The State has not offered any proof in support of its assertion, elaborated on how many instances of fraud have occurred or the relevance of the birth year requirement to identifying instances of fraud. In response, Disability Rights submitted the Declaration of Dr. Kenneth R. Mayer:

> Over the last 40 years, I identified a single case of a fraudulent absentee vote impersonation in a Montana election, from a man who submitted his ex-wife's absentee ballot in a 2011 election. HB 719 would not have prevented this instance, as presumably the man would have known his ex-wife's birth year. Moreover, the birth year requirement did not exist in 2011 and was not necessary to discover, investigate, and prosecute the violation. I estimate that between 2005 and 2024, well over 7.5 million absentee ballots have been cast in Montana elections, a period in which a single case of absentee ballot impersonation occurred.

Declaration of Dr. Kenneth R. Mayer, Plaintiff's Ex. 39, p. 11.

The State tacitly acknowledged the lack of evidence of election fraud when it argued "[t]he limited number of successful prosecutions does not diminish the legitimacy of the preventive interest; it underscores the value of tools that stop improper ballots from being counted in the first place." *State's Response Brief*, p. 11. Against this lack of evidence regarding the reasonableness of HB 719 in promoting the State's interests in public confidence in elections and preventing election fraud is the undisputed fact HB 719 has resulted in thousands of ballots being rejected due to a missing or incorrect birth year. It is undoubtedly true the number of rejected ballots is due, in part, to the imposition of a new requirement for voting absentee, and the number of rejected ballots would likely be reduced as voters become accustomed to the requirement. However, it is also true that even after voter familiarity, a number of ballots will

be rejected as a result of the birth date requirement. The signature requirement for absentee ballots has been implemented for many years, and still roughly one-half of one percent of ballots are uncounted due to failure to meet the signature requirement. The imposition of a birth year requirement will likely result in another percentage of ballots which are uncounted due solely to the birth year requirement. Balanced against the State's lack of evidence of election fraud and its inability to explain how public confidence in elections is elevated by requiring a birth year on absentee ballots, the State has failed to meet its burden of proving HB 719 is reasonable and serves a legitimate state interest or that its asserted interests are more important than the burden on the right to vote.

ORDER

IT IS HEREBY ORDERED:

1. The motion for summary judgment of Plaintiffs Disability Rights Montana and Big Sky 55+ is **GRANTED;**

2. House Bill 719 violates the right of suffrage guaranteed under article II, section 13 of the Montana Constitution; and

3. Defendants State of Montana and Christi Jacobsen, in her official capacity as Montana Secretary of State, including their agents and successors in office, are enjoined from enforcing House Bill 719.

/s/ Mike Menahan
MIKE MENAHAN
District Court Judge

Electronically Signed By:
Hon. Judge Mike Menahan
Fri, Oct 02 2026 12:41:30 PM

cc: Raph J.C. Grabill, Esq., via email
Marcos Mocine-McQueen, Esq., via email
Austin Knudsen, Attorney General, via email
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